

HOUSE BILL ANALYSIS

HB 1195

Title: An act relating to communications between victims of domestic violence and victims' advocates.

Brief Description: Creating a privilege for communications between a victim of domestic violence and victims' advocates.

Sponsors: Representatives Constantine, Sheahan, Dickerson, Hankins, Lantz, Romero, Ballasiotes, Hurst, Kessler, Radcliff, Carlson, Tokuda, Cody, Kenney, Ogden, Wood, Lovick, Edmonds, McIntire, Conway, Rockefeller, Poulsen and Keiser.

Brief Summary of Bill

- Establishes a privilege for communications between a domestic violence victim advocate and a victim of domestic violence.

HOUSE COMMITTEE ON JUDICIARY

Staff: Jim Morishima (786-7191).

Background:

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including "testimonial privileges." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they are to be protected.

Under the common law, four criteria must be satisfied to find a privilege: (1) the communication must be made in confidence; (2) the element of confidentiality must be essential to the relationship; (3) the relationship is one that should be fostered; and (4) the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington statutory law establishes a number of privileges, including communications between the following persons: (1) husband and wife; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and client; and (6) optometrist and client.

Summary of Bill:

A new privilege is established for communications made to a domestic violence victim advocate by a victim. The victim may waive the privilege if he or she so chooses. A domestic violence victim advocate is an employee or volunteer from a community based domestic violence victims' service program, shelter, or association, or a human services agency that provides information, medical or legal advocacy, counseling, or support to victims of domestic violence.

A domestic violence victim advocate may disclose a privileged communication without the victim's consent if failure to do so is likely to result in a clear, imminent risk of serious physical injury or death to the victim or another person. A domestic violence victim advocate acting in good faith is immune from liability in any criminal or civil proceeding stemming from a disclosure made under this exception. The advocate's good faith is presumed in such a proceeding.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research